using different forms for different types of radio systems.[20] Nevertheless, after a few additional, brief criticisms of the coaxial approach to stacking only marginally related functions, we shall attempt to assist the Commission along the path which it is now headed, we shall offer our comments on the proposed Form 600.

The clash of bureau cultures probably becomes most clearly visible at Schedule E of the Form 600. Schedule E provides space for up 17 frequencies to be located at up to six sites, but above the major grid the form asks, only once, whether the entire grid relates to facilties to be added, modified, or deleted. The instructions indicate that only one Schedule E should suffice. However, the choice among three mutually exclusive requested actions must apparently be uniform for the entire grid. We suggest that this obvious inconsistency leads to the conclusion that the interest of the public and the interest of the Commission would best be served by constructing a form that requests, at each submission of an application, a statement laying out the entire license requested, including all of the technical information which the applicant requests be placed on the license. The Commission's computer can then compare each line of the application to the existing authorization, if any, and prepare a public notice, if any is required, based on the new appearance of a proposed operation,[21] a change in an existing

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[20] We do not believe that the requirement that the Commission give comparable regulatory treatment to substantially similar services means that the Commission has to pursue the most difficult possible course with respect to both. We see no reason why different application forms cannot be used for the various components of the Commercial Mobile Radio Services, with meaningfully comparable treatment given to all operators.

[21] For example, the addition of a site to an existing station license or the addition of a frequency at an existing site.

facility,[22] or the absence from the application of any request for continued operation of an existing facility.[23] Our expectation is that the Common Carrier Bureau would soon find it more efficient to deal with a radio system as a whole, rather than as incremental pieces, and that there would be fewer instances of a licensee having difficulty maintaining its documents and keeping its licenses accurate and valid.

The combination of disparate Radio Services into the Form 600 would result in the distribution of hundreds of thousands of forms each year, at least two sheets of which would not be needed by many applicants, and at least three sheets of which would not be of no use to the vast bulk of the applicants. Further, the Form 600's instructions would require three sheets of paper, printed in agate type, at least half of which would not be applicable to each applicant. However, each applicant would have to study all of the instructions carefully to discern which applied to his application. Questions of paper work burden aside, the volume of paper which would be wasted each year by the proposed combination approach would be measured in freight train loads and forests, and the amount of public time wasted would be incalculable. Therefore, we respectfully suggest that the public interest, including the public interest in economical government, would best be served by abandoning the entire approach of the Form 600, and

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[22] For example, a change in operating power or a change in the emission type for an existing facility.

[23] For example, the absence from the application of any facility at a currently authorized site, or the absence of any request for continued authorization for a currently authorized frequency at a current site.

using a variety of application forms, each of which is appropriate only to a certain category of license.

The bulk and complexity of the Multibureaucultural Form 600 leads us to suggest that the proposed form may have reached the critical mass at which countless would-be applicants decide to Schedule F-it and take the risk of operating without authorization, rather than spending 600 hours to learn how to prepare such an application or to pay someone $600 to do it for them. If for no other reason than maintaining the strength its authority over radio communications, we suggest that the FCC take another look at use of separate forms for differing purposes, and to make it as easy as possible for, at the least, internal-use, Private Radio Services licensees, to prepare and file grantable applications.

Whoever wrote the proposed Form 600 instructions should spend the rest of a career listening endlessly to a recorded recitation of those instructions, relieved only by occasional interjections from the Internal Revenue Service Regulations. At the risk of wasting a bit of paper ourselves, but in the interest of having all decision makers in this matter be fully informed, we respectfully refer the Commission to the proposed instruction for Items 34-38 of

the main form, which we selected more or less at random.[24] Plaintively, we ask, whatever happened to the Commission's efforts to write in plain English?

The Commission intends to progess in the automated processing of applications, including the processing of applications submitted on magnetic disk and electronically, but the indefinite length and structure of the proposed Form 600 makes it unduly difficult both for the applicant to prepare an application by computer and for the Commission to process it by computer.[25] There would be no limit to the number of Schedule As, Schedule Bs, Schedule Cs, or Schedule Es which a Form 600 application might contain. We respectfully suggest that, at the cost of some greater use of paper by a small percentage of applicants, the computerized preparation and automated processing of applications could be better facilitiated by following the model of the current Form 574.

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[24] Items 34-38 These items request indications and information that enable the FCC to determine whether an applicant is disqualified from holding an FCC authorization because of misconduct. Items 34-36 must be answered "N" if there is no misconduct. Item 37 must be answered "N" if the applicant is not a party in any pending matter relevant to misconduct. Item 38 must be answered "Y" if the applicant in not subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 862). If the answer to Items 34, 35, 36 or 37 is "Y" or if the answer to Item 38 is "N", attach as an exhibit a statement explaining the circumstances and why the applicant believes that an FCC grant of the application would be in the public interest nothwithstanding the actual or alleged misconduct. Use 34A, 35A, 36A, 37A, or 38A as the item number(s) for such exhibits, respectively.

[25] We have already begun preparation of a computer program for the automated preparation of a Form 600 application. Our experience in preparing and using such programs for the current Form 574, and in preparing such a program for the now-abandoned edition of the Form 574 which the Commission had proposed in September 1994 leads us to offer these comments and this plea that the Commission take fully into account the "automate-ability" of any form which it adopts.

A large radio system may require the use of more than one Form 574, but each Form 574 submitted is of uniform length and structure. We respectfully suggest that computer programming and operation will be more efficiently and expeditiously achieved by both the Commission and the public if the Commission designs its forms so that each entire form is of a fixed length and structure, with the applicant required to submit multiple, complete forms if more than one form is required to prepare a complete application. We respectfully suggest that analysis of both private and common carrier authorizations would demonstrate that full computerization of the application processs can be more readily, efficiently, and effectively achieved if the Commission makes the length and structure of any application form uniform, and then has any applicant who needs to submit more information than one form accommodates use multiple, complete application forms.

The incremental approach to licensing wastes applicant time and Commission data space by repeatedly in the Form 600 requesting whether the applicant is adding, deleting or modifying a facility. If the Commission uses a form more in line with the design of Schedule E of the Form 600, then it will have the entire radio system under one call sign placed before it in each application,[26] and will not have to take up time and data storage space with multiple questions concerning addition, deletion, or modification of facilities.

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[26] Perhaps, in the case of a large, traditional CMRS system, requiring a collection of Forms 600 to include all transmitters licensed under one call sign. Were the Commission to follow the approach of the Private Radio Bureau and authorize only a limited number of sites under one call sign, but adopt pending proposals for the transmission of alternative identifiers, it could further reduce the amount of work required for modifications (including additions and deletions) of existing systems.

The Commission proposes to require more than one hundred thousand applicants per year to supply information in terms of meters and kilometers. Today's elementary school children are learning to use the metric system. Today's adults, who are the million persons who are going to use the Form 600 for the coming decade, do not routinely use the metric system, do not know the conversion factors, and cannot reasonably be expected to give reliable information in that system. Although a plumber, or a tow truck operator, or a common carrier operator may use a metric hammer or a metric crowbar in her daily work, she has no personal use for or internal concept of height and distance information stated in metric terms. If the Commission needs height and distance information in metric terms, either to comply with congressional mandate or for interchange with other governments, the Commission can easily program its computers to make conversions from feet and miles automatically, and thereby obtain reliable information economically and comfortably from its applicants.[27] The current Form 574 has survived for about a decade. In the interests of regulatory economy, we respectfully suggest that the Commission give itself a break and allow Americans for one more decade, until today's children who really are learning the metric system become applicants, to communicate with their government in terms which are not only comparable to, but are exactly those familiar terms which they use daily.

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[27] Before deciding to require the submission of antenna heights in meters, the Commission should ask itself how many returns it wants its Antenna Survey Branch to mail each year to persons whose statement of height in feet doesn't come close to matching a metric Commission record. If the answer is more than three returns per year, then perhaps some further thought is required.

To facilitate use of any new form by both the public and the Commission, the Commission should expressly authorize the submission of single-sided prints of the form, regardless of the double-sided printing of the original. Such authority would cost the United States something more in storage costs, but should result in more economical preparation and processing of applications.

Point by point

The very first item on the Main Form won't work. The Filing Fee boxes provide space for only one fee type code and only one fee multiple, yet the use of boxes for a subtotal and a grand total indicates a correct understanding that more than one fee type will often be required. While it will be one more page (against which we inconsistently railed, above), we respectfully suggest that the public interest would be best served by distributing an FCC Form 155 with each Form 600 and by deleting the Filing Fee boxes, at least as they are currently designed.[28]

The inclusion of multiple items of data under one item number unnecessarily complicates the preparation and automated processing of a form. Item 5 of the proposed Main Form of the Form 600 should be revised to break it into two items, namely, a data item for the applicant's mailing address and a data item for the person to whom mail should be directed. Otherwise, there is the risk that the magnetic or electronic information streams from the applicant may not

[28] We trust that the Commission will distribute a Form 155 with each Form 600, rather than requiring, as does the IRS, a specific request for each form and schedule, regardless of how often they are likely to be used concurrently.

match the Commission's processing program, thereby allowing the processing program to get out of step with the data. Item A1 of Schedule A presents the same problem as Item 5 of the Main Form, however, Item A1 creates a greater problem because it calls for an indefinite number of responses at a single item, whereas Item 5 would request exactly two. While the information could be structured reliably at the un-numbered item of Schedule E titled "Area of operation for Mobiles, Temporary, or Itinerant Stations", the item requests a variety of information under one heading, which we suggest should be isolated into separately numbered items.

Item 18 of the Main Form is of questionable virtue. It asks for the applicant's belief, rather than for the submission of a fact. The instructions reveal that the Commission does not intend to take the applicant's word for the answer given. The instructions also reveal that the item is an invitation to the applicant to mislead the public by claiming a disingenuous belief as to the nature of the application, thereby potentially lulling competitors into a false sense of security. We respectfully suggest that the Commission decide either not to ask the question and to determine the fact itself prior to the issuance of a public notice, or to place the applicant on notice that an incorrect answer as to the fact of — rather than a belief as to — the nature of an application will result in dismissal of the application upon discovery of the defect.

If the Commission decides to continue along the path of using the same form for both public and private radio system applicants, then it should think further about Items 22-24 of the Main Form. Item 22 provides the opportunity to answer (quite correctly) that the applicant will

engage in "Both" CMRS and PMRS. However, there is not necessarily any correct answer to Item 23. If a PMRS applicant intends to serve both its own internal needs and the needs of a limited universe of eligibles, then a correct answer to Item 23 would require an answer of both "E" and "I", which the form will not accommodate (and neither will a computer). We suggest that the Commission consider the use of multiple check boxes for this item, rather than the use of a box which will accommodate only one character.

Item 24 of the Main Form is bound to produce thousands of wrong answers per year, resulting thousands of application returns to PMRS applicants, who earnestly believe that they intend to make a profit from their internal use of radio communications. After all, the sales person who sold the system promised that it would help the applicant make more money. The question has to be asked, but it is difficult to see how it can be asked of thousands of small business operators without resulting in wasteful misunderstandings. We suggest that a fuller explanation in the instructions, if readable and read, might help reduce the number of errors.

With reference to our comments above, and with reference to proposed Schedule E, we suggest that Items A12, A13, A14, A15, A16, and A17 of proposed Schedule A, under the heading "Facilities Not Constructed", are duplicative of information requested elsewhere in the application and are, therefore, not necessary.

We suggest that Item A1 of Schedule A be revised to consist of 22 check boxes, rather than one box of indefinite length and content. To facilitate computer preparation and processing

of applications, the Commission should revise Item A1 to provide one answer position for each possible purpose for the application. The use of 22 check boxes would also avoid computerized confusion in processing resulting from the manual insertion of responses in one long box in a random order, *e.g.*, L, C, N, M.

Item B2 of Schedule B requests the FCC Tower Number. Such information is not readily available to the public. We further suggest that this is an item of information which can more readily be obtained by the Commission by processing the data against its own data base than by requesting it from the applicant. The Commission is the sole authority for the number which it assigns to a tower, and, therefore, the only way in which a conflict could arise in a response to this item would be through a typographical error; there is no possibility of conflict with a different agency's data base. Requesting that an applicant supply the tower number assigned by the Commission can lead only to countless, unnecessary returns which result from typographical errors by applicants, as well as countless contacts with the Commission by applicants who would need the information.

Item B3 of Schedule B requests the submission of the FAA Aeronautical Study Number, which is also requested by Schedule F. Accordingly, Item B3 is not necessary and can be deleted.

We respectfully suggest that there are better ways than Schedule B presents for the Commission to deal with the situation of having two concurrent mapping systems in use, namely,

NAD 27 and NAD 83, than to force applicants either to know the datum on which the coordinates are based, or to make an arithmetic conversion which could more economically and reliably be made routinely by the Commission. While we recognize the problem created by the two different data on the shape of the earth (and the problem created by the fact that even better information has become available since 1983), we suggest that common sense will recognize that the question, if asked, probably will be answered incorrectly as often as correctly.

Until such time as the Commerce Department and all States have replaced all topographic maps with NAD 83 maps, and until those maps have had a chance to take hold as the reference for all site site information, requiring and expecting exacting responses to the NAD 27/83 question is likely to be an enormous waste and a misleading exercise for both the Commission and applicants. The Commission should recognize that tens of thousands of applications are filed each year which are based entirely on site information gleaned by reference to other licenses. It would not be realistic to expect applicants suddenly to abandon that practice and for every plumber, taxi service, and towing company[29] to incur the cost and delay of ordering up new maps and learning how to use them. We suggest that, in the interest of the Commission's developing a reliable data base,[30] and in the interest of restraining the burden placed on the

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[29] The earth datum question also appears at Schedule E to be used by PMRS applicants.

[30] We recognize that FAA figures show that, each year, approximately two aircraft have unsatisfactory encounters with towers. While those incidents are regrettable, we respectfully suggest that, even given access to the military code of the Global Positioning System, flying blind in reliance on exact knowledge of the location of a tower would be an exercise in gross stupidity. We know of no instances in which an aircraft was damaged because of a discrepancy in a tower's geographical coordinates. With respect to the desireability of correct information

public, a better accommodation of interests could be made by having the applicant supply geographic coordinates, and having the applicant specify the datum only if known with certainty. This is not to suggest that we stand in favor of the reckless submission of bad information by indifferent applicants. Rather, it is to suggest that, a more narrow approach would save countless hours of public burden, would save countless hours of work by the Commission in sending and receiving and explaining by telephone thousands of application returns, and would result in a more reliable data base for use by the Commission and the public. We know that, as Mr. Justice Holmes said, all law is the drawing of lines, this line the Commission would draw impracticably finely.

Items B13-B16 and Items C13-16 appear to be wholly unnecessary, particularly if the Commission adopts the approach of structuring its applications to request from the applicant in each application a complete layout of the entire system. We suggest that if the Commission takes the Common Carrier Bureau approach, it can obtain the same reference to a changed antenna site by requesting the existing transmitter number, which would be much simpler to supply and require less space to store.

Schedules B and C would appear to require the submission of a great deal of information which would be unnecessary for facilities which are regulated by reference to mileage

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on the location of stations which are regulated by mileage separations, we suggest that the mileage separation standards are sufficiently generous that even the greatest discrepancy between NAD 27 and NAD 83 would have no discernable effect on interference between radio systems.

separations or to defined service area boundaries. Accordingly, the Commission may desire to consider the proposed form more fully and to structure it more precisely to avoid imposing high and unnecessary engineering costs on thousands of applicants.

Schedule D presents a problem of proving space for a single response as to the Purpose of Application, while multiple responses are possible. As many as three of the possible responses (modification, renewal, and assignment) may be necessary in a single application, but space for only one character is provided. Accordingly, the Item should be revised appropriately. We suggest the use of multiple check boxes.

Before continuing to ask at Schedule D about the number of paging receivers to be used, the Commission should decide whether it needs or will make any use of such information. On channels on which exclusive use has been granted, the information is of no utility to the Commission, because the licensee can serve as many or as few pagers as it desires.[31] On channels on which shared use is available, the Commission has not in any reported case denied a request for additional use of a channel for additional paging receivers, thereby indicating that the count of paging receivers is not of any utility on shared channels. If the Commission intends to limit the number of paging receivers which it will allow to be placed on a channel, then it

[31] To the extent that taxation is based on the number of subscribers, the number of subscribers may not, in any event, match the number paging receivers in use, because one commercial subscriber may use a multiplicity of paging receivers.

should ask the question. If not, then there is no value to imposing the information collection burden on any member of the public.

With respect to Remote Pick Up stations, Schedule D would ask for the city and state of the Associated Broadcast Station, as well as the call sign. If the Commission requests only the call sign, then it can quickly ascertain the location of the Broadcast station, and it need not put the applicant to the burden of typing, and the Commission to the burden of storing, the location of the station.

Schedule E appears to request a small amount of unnecessary information. For proposed countywide mobile operation, the application requests the geographical coordinates of an undefined site. If mobile operation is to be confined to the boundaries of a county, then geographical coordinates are not only not necessary, but they do not provide any necessary information. The draft Form 600 includes a seemingly unnecessary blank after the choice "Nationwide". What nation other than the United States of America might possibly be entered?

Is There A Lawyer In The House?

One fact is clear by the Commission's FNPRM, the preparation, filing and prosecution of applications to the Commission for authority to operate CMRS and PMRS facilities will become far more complicated in the future. The Commission will require from applicants, in any event, additional information, additions, explanations, and warranties. The effect of each

such response will be found both in system design and in determining each applicant's eligibility to operate the proposed facilities in accord with *law*.

It, therefore, becomes of paramount importance that the Commission finally recognize and enforce the content of its own rules and accept the long line of cases and precedents in the area of representation before Federal agencies which provide that only an applicant or its legal representative may prepare, file and prosecute applications and related documents before the agency.

The importance of this proposed action is made abundantly clear when the Commission considers its recent experiences with "application mills" and 1-800 SMR licensing houses, promising get-rich-quick schemes via application preparation services. These operations and the harm imposed on the unsuspecting public will not be gone until and unless the Commission accepts this position and provides for itself the ability to take formal disbarment actions against persons who might violate or abuse the Commission's processes with an intent to defraud the public.[32]

Ultimately, the Commission's decisions in all matters must rest on whether its proposed action will best serve the public interest. We cannot discern of any basis for continuing to groom pigeons and suckers to be taken by charlatans and boiler-room "engineers". Immediate

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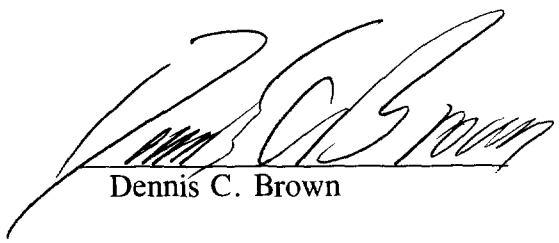
[32] Those persons who might not heed the Commission's position would place themselves at risk of criminal prosecution for practicing law without a license or authority.

relief is necessary and desirable to protect persons from these operations. The Commission has the authority to prevent additional massive abuses of its processes. It simply requires the forthrightness to exercise its authority.

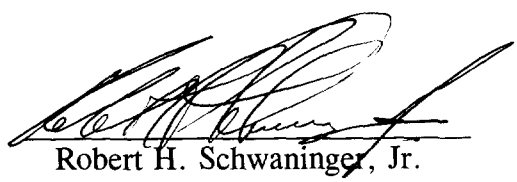
Conclusion

For all the foregoing reasons, we respectfully request that the Commission amend its rules and revise its application forms and procedures in accord with the suggestions offered herein.

Respectfully submitted,



Dennis C. Brown



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Dated: June 20, 1994